

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DWIGHT BENSON,  
Plaintiff,  
v.  
PIERCE COUNTY JAIL, *et al.*,  
Defendants.

Case No. C08-5407 BHS/KLS

**REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED *IN  
FORMA PAUPERIS***

**NOTED FOR:**  
**October 10, 2008**

This case has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*. Plaintiff's application was deficient as the Court was unable to determine his eligibility for *in forma pauperis* status based on the information submitted by Plaintiff. Accordingly, Plaintiff was ordered to show cause why his application should not be dismissed. (Dkt. # 4). Plaintiff has not responded to the Court's Order.

## I. DISCUSSION

The court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*

*Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

3 On July 26, 2008, Plaintiff filed his motion to proceed *in forma pauperis*. (Dkt. # 1). Upon  
4 review of his application, the Court noted that Plaintiff indicated he receives \$2,596.00 per month in  
5 Veteran's Administration disability benefits. (Dkt. # 1, p. 2). Plaintiff was ordered to show cause why  
6 the Court should not consider these funds in determining Plaintiff's eligibility for *in forma pauperis*  
7 status. (Dkt. # 4). Plaintiff also indicated in his application that he was currently incarcerated in "Pioneer  
8 Center North" (Dkt. # 1, p. 1), but on the same day that he filed his application, he provided the Court  
9 with a change of address, reflecting a new address at 336 27<sup>th</sup> Avenue, in Seattle, Washington. (Dkt. # 2).  
10 Accordingly, Plaintiff was also ordered to advise the Court of his current incarceration status. (Dkt. # 4).  
11 Plaintiff was given until August 25, 2008 to respond to the Court's Order to Show Cause. *Id.* To date,  
12 Plaintiff has not responded nor requested an extension of time within which to respond.

## II. CONCLUSION

14 Because Plaintiff has failed to respond to the Court's order to show cause regarding his need to  
15 pay the court filing fee or file a proper application to proceed *in forma pauperis*, the undersigned  
16 recommends the court dismiss Plaintiff's Complaint unless he pays the required \$350.00 fee **within thirty**  
17 **(30) days** of the Court's order.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties shall  
19 have ten (10) days from service of this Report and Recommendation to file written objections thereto. *See*  
20 *also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
21 appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P.  
22 72(b), the Clerk is directed to set this matter for consideration on **October 10, 2008**, as noted in the  
23 caption.

Dated this 23rd day of September, 2008.

Karen L. Strombom  
Karen L. Strombom  
United States Magistrate Judge